

1 Arif Virji, Esq. (SBN 130322)  
[avirji@cmprlaw.com](mailto:avirji@cmprlaw.com)  
2 Justin D. Hein, Esq. (SBN 249275)  
[jhein@cmprlaw.com](mailto:jhein@cmprlaw.com)  
3 CARLE, MACKIE, POWER & ROSS LLP  
100 B Street, Suite 400  
4 Santa Rosa, California 95401  
Telephone: (707) 526-4200  
5 Facsimile: (707) 526-4707  
6 Attorneys for Defendant,  
Cuvaision, Inc.  
7  
8

9  
10 UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

11 **Andres Gomez,**  
12 Plaintiff,  
13 v.  
14 **Cuvaision, Inc.,** a California Corporation,  
15 Defendant.  
16

Case No: 3:22-cv-01654-JSC  
**DEFENDANT CUVAISON, INC.'S  
ANSWER AND AFFIRMATIVE  
DEFENSES TO COMPLAINT**  
**DEMAND FOR JURY TRIAL**  
**Complaint Filed: March 15, 2022**  
**Trial Date: Not yet set**

17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1

**ANSWER**

2

Defendant Cuvaison, Inc. (“Defendant” or “Cuvaison”), by and through its undersigned  
counsel, hereby submits its Answer to Plaintiff Andres Gomez’s (“Plaintiff” or “Gomez”)  
Complaint.

5

**PARTIES**

6

1. In response to Paragraph 1 of the Complaint, Cuvaison lacks knowledge or information  
sufficient to form a belief about the truth of the allegations, and on that basis, denies each and  
every allegation.

9

2. Admitted that Cuvaison operated the winery under multiple DBA’s including Cuvaison  
Winery in March or August of 2021.

11

3. Admitted that Cuvaison currently operates the winery under multiple DBA’s including  
Cuvaison Winery.

13

4. Admitted that Cuvaison maintained a website in March 2021 or August 2021.

14

5. Admitted that Cuvaison currently owns or operates a website.

15

6. In response to Paragraph 6 of the Complaint, Defendant is not required to answer legal  
conclusions and argument, and on that basis, denies each and every allegation.

17

**JURISDICTION AND VENUE**

18

7. In response to Paragraph 7 of the Complaint, Cuvaison is not required to answer legal  
conclusions and argument, and on that basis, denies each and every allegation.

20

8. In response to Paragraph 8 of the Complaint, Cuvaison is not required to answer legal  
conclusions and argument, and on that basis, denies each and every allegation.

22

9. In response to Paragraph 9 of the Complaint, Cuvaison is not required to answer legal  
conclusions and argument, and on that basis, denies each and every allegation.

24

**FACTUAL ALLEGATIONS**

25

10. In response to Paragraph 10 of the Complaint, Cuvaison is without sufficient knowledge  
or information to form a belief as to these allegations, and on that basis denies each of the  
allegations contained herein.

28

11. In response to Paragraph 11 of the Complaint, Cuvaison is without sufficient knowledge

1 or information to form a belief as to these allegations, and on that basis denies each of the  
2 allegations contained herein.

3 12. In response to Paragraph 12 of the Complaint, Cuvaison admits it operates a vineyard in  
4 Napa, California, where it sells wine and has wine tasting.

5 13. In response to Paragraph 13 of the Complaint, Cuvaison denies the allegations.

6 14. In response to Paragraph 14 of the Complaint, Cuvaison admits that its website offers  
7 information and products for sale.

8 15. In response to Paragraph 15 of the Complaint, Cuvaison admits that its website offers  
9 information and products for sale.

10 16. In response to Paragraph 16 of the Complaint, Cuvaison is without sufficient knowledge  
11 or information to form a belief as to these allegations, and on that basis denies each of the  
12 allegations contained herein.

13 17. In response to Paragraph 17 of the Complaint, Cuvaison is without sufficient knowledge  
14 or information to form a belief as to these allegations, and on that basis denies each of the  
15 allegations contained herein.

16 18. In response to Paragraph 18 of the Complaint, Cuvaison is without sufficient knowledge  
17 or information to form a belief as to these allegations, and on that basis denies each of the  
18 allegations contained herein.

19 19. In response to Paragraph 19 of the Complaint, Cuvaison is without sufficient knowledge  
20 or information to form a belief as to these allegations, and on that basis denies each of the  
21 allegations contained herein.

22 20. In response to Paragraph 20 of the Complaint, Cuvaison denies each and every allegation.

23 21. In response to Paragraph 21 of the Complaint, Cuvaison denies each and every allegation.

24 22. In response to Paragraph 22 of the Complaint, Cuvaison is without sufficient knowledge  
25 or information to form a belief as to these allegations, and on that basis denies each of the  
26 allegations contained herein.

27 23. In response to Paragraph 23 of the Complaint, Cuvaison denies each and every allegation.

28 24. In response to Paragraph 24 of the Complaint, Cuvaison denies each and every allegation.

1 25. In response to Paragraph 25 of the Complaint, Cuvaison denies each and every allegation.

2 26. In response to Paragraph 26 of the Complaint, Cuvaison denies each and every allegation.

3 27. In response to Paragraph 27 of the Complaint, Cuvaison is without sufficient knowledge

4 or information to form a belief as to these allegations, and on that basis denies each of the

5 allegations contained herein.

6 28. In response to Paragraph 28 of the Complaint, Cuvaison denies each and every allegation.

7 29. In response to Paragraph 29 of the Complaint, Cuvaison denies each and every allegation.

8 30. In response to Paragraph 30 of the Complaint, Cuvaison is not required to answer legal

9 conclusions and argument, and on that basis, denies each and every allegation.

10 31. In response to Paragraph 31 of the Complaint, Cuvaison is not required to answer legal

11 conclusions and argument, and on that basis, denies each and every allegation.

12 32. In response to Paragraph 32 of the Complaint, Cuvaison denies each and every allegation.

13 33. In response to Paragraph 33 of the Complaint, Cuvaison denies each and every allegation.

14 34. In response to Paragraph 34 of the Complaint, Cuvaison denies each and every allegation.

15 35. In response to Paragraph 35 of the Complaint, Cuvaison is not required to answer legal

16 conclusions and argument, and on that basis, denies each and every allegation.

17 **CAUSES OF ACTION**

18 **FIRST CAUSE OF ACTION**

19 **VIOLATION OF THE AMERICANS WITH DISABILITIES**

20 **ACT OF 1990 (42 U.S.C. section 12101, et seq.)**

21 36. In response to Paragraph 36 of the Complaint, Cuvaison is not required to answer legal

22 conclusions and argument, and on that basis, denies each and every allegation.

23 37. In response to Paragraph 37 of the Complaint, Cuvaison is not required to answer legal

24 conclusions and argument, and on that basis, denies each and every allegation.

25 38. In response to Paragraph 38 of the Complaint, Cuvaison is not required to answer legal

26 conclusions and argument, and on that basis, denies each and every allegation.

27 39. In response to Paragraph 39 of the Complaint, Cuvaison is not required to answer legal

28 conclusions and argument, and on that basis, denies each and every allegation.

1 40. In response to Paragraph 40 of the Complaint, Cuvaison is not required to answer legal  
 2 conclusions and argument, and on that basis, denies each and every allegation.

3 41. In response to Paragraph 41 of the Complaint Cuvaison is not required to answer legal  
 4 conclusions and argument, and on that basis, denies each and every allegation.

5 42. In response to Paragraph 42 of the Complaint, Cuvaison is not required to answer legal  
 6 conclusions and argument, and on that basis, denies each and every allegation.

7 **II. SECOND CAUSE OF ACTION:**

8 **VIOLATION OF THE UNRUH CIVIL RIGHTS ACT (Cal. Civ. Code**

9 **§ 51-53.)**

10 43. In response to Paragraph 43 of the Complaint, Cuvaison is not required to answer legal  
 11 conclusions and argument, and on that basis, denies each and every allegation.

12 44. In response to Paragraph 44 of the Complaint, Cuvaison is not required to answer legal  
 13 conclusions and argument, and on that basis, denies each and every allegation.

14 45. In response to Paragraph 45 of the Complaint, Cuvaison denies the allegations.

15 46. In response to Paragraph 46 of the Complaint, Cuvaison denies the allegations.

16 47. In response to Paragraph 47 of the Complaint, Cuvaison is not required to answer legal  
 17 conclusions and argument, and on that basis, denies each and every allegation.

18 **AFFIRMATIVE DEFENSES**

19 In further answer to Plaintiff's Complaint, Cuvaison alleges the following affirmative  
 20 defenses. In asserting these defenses, Cuvaison does not assume the burden of proof as to matters  
 21 that, pursuant to law, are Plaintiff's burden to prove. Cuvaison reserves the right to amend, correct  
 22 and/or withdraw any of its additional and separate defenses.

23 **AFFIRMATIVE DEFENSE**

24 Plaintiff's Complaint and each and every claim contained therein fails to state facts  
 25 sufficient to state a claim upon which relief may be granted.

26 **AFFIRMATIVE DEFENSE**

27 Plaintiff's claim for violation of the Americans with Disabilities Act ("ADA") is barred  
 28 by the doctrine of mootness. To the extent the barriers alleged by Plaintiff, if any, exist, they no

1 longer exist.

2 **AFFIRMATIVE DEFENSE**

3 Plaintiff's Complaint and the claims alleged in the Complaint are barred because this Court  
4 lacks subject matter jurisdiction over Plaintiff's ADA claim.

5 **AFFIRMATIVE DEFENSE**

6 Plaintiff's Complaint and the claims alleged in the Complaint are barred because this Court  
7 lacks subject matter jurisdiction over Plaintiff's Unruh Act claim.

8 **AFFIRMATIVE DEFENSE**

9 Plaintiff's Complaint and the claims alleged in the Complaint are barred because the Unruh  
10 Act and the ADA do not require accessibility to the Website under these circumstances and/or to  
11 all portions of the Website.

12 **AFFIRMATIVE DEFENSE**

13 Plaintiff's Complaint and the claims alleged in the Complaint are barred because, even if  
14 the Unruh Act and/or ADA require accessibility, the absence of any defined standards for website  
15 accessibility that has the force of law (including the private industry Web Content Accessibility  
16 Guidelines referenced in the Complaint) renders any determination of accessibility or  
17 inaccessibility subject to standards that are impermissibly vague and ambiguous in violation of  
18 due process and equitable principles regarding the specificity of any injunctive relief.

19 **AFFIRMATIVE DEFENSE**

20 Plaintiff's Complaint and the claims alleged in the Complaint are barred because the  
21 barrier removal Plaintiff seeks under the Unruh Act and/or the ADA is not capable of being carried  
22 out without causing Cuaison undue hardship and/or fundamentally altering the nature of the  
23 Website.

24 **AFFIRMATIVE DEFENSE**

25 Plaintiff's Complaint and the claims alleged in the Complaint are barred to the extent they  
26 rely on the contention that the website was designed in violation of the Unruh Act and/or ADA  
27 because the Website was designed and constructed before any applicable regulations have been  
28 issued.

**AFFIRMATIVE DEFENSE**

Plaintiff's Complaint and the claims alleged in the Complaint are barred to the extent they rely on the contention that the Website was designed in violation of the Unruh Act and/or ADA because the website was designed and constructed before any applicable standard that has the force of law has been issued.

**AFFIRMATIVE DEFENSE**

Plaintiff's Complaint and the claims alleged in the Complaint are barred to the extent they rely on the contention that the Website was designed in violation of the Unruh Act and/or the ADA, because neither statute nor either of the statutes' implementing regulations address accessibility to websites.

**AFFIRMATIVE DEFENSE**

Plaintiff's Complaint and the claims alleged in the Complaint are barred by Defendant's good faith reliance upon reasonable interpretations of federal and California law.

**AFFIRMATIVE DEFENSE**

Plaintiff's damages, if any, are barred to the extent Plaintiff has failed to mitigate or reasonably attempt to mitigate any damages.

**AFFIRMATIVE DEFENSE**

Plaintiff's Complaint and the claims alleged in the Complaint are barred to the extent Plaintiff never made any request for reasonable modifications of policies, practices or procedures, or for the provision of auxiliary aids or services, as would be required to pursue claims for Defendant's failure to provide reasonable modifications or auxiliary aids or services.

**AFFIRMATIVE DEFENSE**

Plaintiff's Complaint and the claims alleged in the Complaint are barred to the extent the alleged violations of law are excused, exempted, or justified under the statutes upon which Plaintiff's claims are based.

**AFFIRMATIVE DEFENSE**

Plaintiff's claim for injunctive relief is barred to the extent Plaintiff lacks standing to seek or receive the injunctive relief sought in the Complaint.

**AFFIRMATIVE DEFENSE**

Plaintiff's Complaint and the claims under the Unruh Act are barred by the Commerce Clause of the United States Constitution, Article I, Section 8, in that any attempt by California to regulate the Website constitutes an unlawful restraint of interstate commerce.

**AFFIRMATIVE DEFENSE**

Plaintiff's Complaint and the Unruh Act cause of action alleged in the Complaint are barred to the extent Plaintiff's requested modifications of policies, practices and procedures are not necessary to Plaintiff's equal access to the portions of the Website that operate as a place of public accommodation (if any) and/or are not reasonable modifications to Cuvalion's alleged policies, practices and procedures.

**AFFIRMATIVE DEFENSE**

Plaintiff's Complaint and the claims alleged in the Complaint are barred because the alleged violations are de minimis and non-actionable, as they do not materially impair Plaintiff's use of the Website for its intended purpose, nor do they materially impede Plaintiff's access to, and use of, a brick-and-mortar locations owned or operated by Defendant.

**AFFIRMATIVE DEFENSE**

Plaintiff's claim for damages under California law is barred because Plaintiff was not denied equal access to the Website or to any brick and mortar locations owned or operated by Defendant.

**AFFIRMATIVE DEFENSE**

Plaintiff's Complaint and the claims alleged in the Complaint are barred by the doctrine of primary jurisdiction.

**AFFIRMATIVE DEFENSE**

Plaintiff's Complaint and the claims alleged in the Complaint are barred by Plaintiff's failure to state a clear and concise statement of his claim, including, without limitation, his failure to state all of the dates on which he allegedly encountered barriers on the Website, to identify specific portions of the Website at which barriers allegedly were encountered, and to specify where he was when he accessed the Website.

**1 AFFIRMATIVE DEFENSE**

2 Plaintiff's Complaint and the claims alleged in the Complaint are barred because Plaintiff  
 3 has suffered no legally cognizable damages as a result of the matters alleged in the Complaint.

**4 AFFIRMATIVE DEFENSE**

5 Plaintiff's Complaint and the claims alleged in the Complaint are barred because the same  
 6 goods, services and information that Plaintiff claims are unavailable to him are equally available  
 7 through alternative means in satisfaction of any and all statutory obligations.

**8 AFFIRMATIVE DEFENSE**

9 Plaintiff's Complaint and the claims alleged in the Complaint are barred, in whole or in  
 10 part, to the extent the operation of certain aspects of the Website are subject to the control of third  
 11 parties acting outside the scope of agency, employment or control of Defendant.

**12 AFFIRMATIVE DEFENSE**

13 Plaintiff's Complaint and the claims alleged in the Complaint are barred to the extent that  
 14 Plaintiff has failed to name an indispensable party that operates and controls the circumstances  
 15 that are alleged in the Complaint, without which the injunctive relief cannot be had.

**16 AFFIRMATIVE DEFENSE**

17 Plaintiff's claims under the Unruh Act are barred as Plaintiff is not a resident of California  
 18 and/or Plaintiff was not physically located in California when he allegedly attempted to view the  
 19 Website.

**20 AFFIRMATIVE DEFENSE**

21 Plaintiff's claims under the Unruh Act are barred as Plaintiff did not encounter access  
 22 barriers which denied him full and equal access to the facilities, goods, and services offered to the  
 23 public and made available to the public on Defendant's Website.

**24 AFFIRMATIVE DEFENSE**

25 Plaintiff's claims under the Unruh Act are barred as Plaintiff has not been deterred, on any  
 26 basis, from accessing the Website.

**27 AFFIRMATIVE DEFENSE**

28 Plaintiff's claims under the Unruh Act are barred as Plaintiff had no intent to patronize the

1 business owned by Defendant at any time.

2 **AFFIRMATIVE DEFENSE**

3 Plaintiff's claims under the Unruh Act are barred as Plaintiff has no intent to return to  
4 patronize most, if not all, of the businesses he sues, even when websites are rendered readable by  
5 screen reading software.

6 **AFFIRMATIVE DEFENSE**

7 Plaintiff's claims under the Unruh Act are barred as Plaintiff did not return to patronize  
8 most, if not all, of the businesses he sued, even when websites are rendered readable by screen  
9 reading software.

10 **AFFIRMATIVE DEFENSE**

11 Plaintiff's Complaint and the claims alleged in the Complaint are barred by the doctrine of  
12 unclean hands by reason of Plaintiff's conduct and actions.

13 **PRAAYER FOR RELIEF**

14 WHEREFORE, Defendant pray that this Court enter a judgment as follows:

- 15 1. That the Complaint be dismissed with prejudice and that a judgment be entered in favor  
16 of Defendant;
- 17 2. That Plaintiff take nothing by way of his Complaint;
- 18 3. That Defendant be awarded its costs of suit incurred in defense of this action, including  
19 its reasonable attorneys' fees; and,
- 20 4. For such further and other relief as the court may deem just and proper.

21 **DEMAND FOR JURY TRIAL**

22 Defendant hereby demands a jury trial on all issues raised in the Complaint by Plaintiff  
23 for which a jury is authorized by law.

24

25 Dated: May 25, 2022

CARLE, MACKIE, POWER & ROSS LLP

26

27 By: /s/ Arif Virji  
Arif Virji, Esq.  
Justin D. Hein, Esq.  
Attorneys for Defendant, Cuaison, Inc.

28

CARLE, MACKIE,  
POWER & ROSS LLP